IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.809 OF 1994

The Tata Power Company Limited & Anr. .. Petitioners
V/s
Maharashtra Pollution Control Board
& Ors. .. Respondents

Mr.C.E.Bharucha with Mr.H.N.Vakil i/by M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners.

Mr.A.D.Kango for the Respondent Nos.1 & 2.

Mr.S.S.Pakale for Respondent No.3.

Mr.Rajiv Chavan, AGP for Respondent No.4 - State.

CORAM: S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.
DATE : 22.9.2004.

P.C.:

1. By this petition, the Petitioners are basically challenging the Assessment Order dated 15.2.1994 of the Respondent No.1, which according to the Petitioners is contrary to the provisions of the **Water (Prevention and Control of Pollution) Cess Act, 1977**. The learned Counsel for the Petitioners has brought to our notice the Judgment of the Hon'ble Supreme Court in the case of **Union of India V/s National Hydroelectric Power Corporation Limited and Others - (2001) 6 Supreme Court Cases 307**. The very same Notification which was involved before the Supreme Court is also involved in the present case viz. the Notificatiion dated 16th April, 1993. Before the Supreme Court it was contended that the said Notification could not be sustained since

the Central Government had not complied with the provisions of Section 16(2) of the Water (Prevention and Control of Pollution) Cess Act. Section 16 of the Act reads as under:-

> "16. Power to amend Schedule I. - (1) The Central Government may, by notification in the Official Gazette, add to Schedule I any industry having regard to the consumption of water in the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of sub-section (2), be deemed to be amended accordingly.
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> (2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its reassembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People, and if Parliament makes any modification in the notification or directs that the notificatiion should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder."

2. While considering the provisions of Section 16, the Supreme Court has clearly observed in paragraph No.8 as under:-

> 8. Sub-section (1) gives power to the Central Government to add to Schedule I any industry, but the procedure which is to be followed is provided by sub-section (2). When a notification is issued with a view to making an addition to Schedule I, the same is required to be laid before each House of Parliament if it is sitting and if Parliament is not in session then a time-limit of seven days is prescribed from the reassembly of Parliament within which the notification must be so placed. Sub-section (2) further requires that after the notification has been so placed, then within

> fifteen days of the placing of the notification, the Central Government has to seek approval of Parliament to the issuance of the notification. Mere perusal of sub-section (2) shows that there has to be a positive act of approval by parliament to the issuanace of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time-limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for.

3. In the present case it is undisputed that no such resolution relationg to the Notification dated 16th April, 1993 had been moved before the Parliament. In fact, the Union of India has not even chosen to file an affidavit in reply in this matter, though the period of more than 10 years has been lapsed. The learned Counsel for the Union of India sought time to take further instructions in the matter. We are however not inclined to grant time in view of the aforesaid categorical Judgment of the Hon’ble Supreme Court. In no uncertain terms the Hon’ble Supreme Court has held that the Notification has not only to be placed before the House of Parliament, but also has to be approved by the House of Parliament. In the instant case, the Notification was not even placed before the House of Parliament. Under these facts and circumstances, the said levy by way of Assessment Order cannot be sustained at all. In view thereof, Rule is made absolute whereby the Assessment Order dated 15.2.1994 being Exhibit "D" to the Petition stands quashed and set aside.

(S.RADHAKRISHNAN,J.)

(S.J.VAZIFDAR,J.)